

UNITED STATES OF AMERICA,

Plaintiff,

v.

LARRY DELATTE,

Defendant.

Civil Action No. \_\_\_\_\_

Judge \_\_\_\_\_

Plaintiff, the United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), files this complaint and alleges as follows:

1. The United States brings this civil action against Larry Delatte for recovery of at least \$32 million in response costs and a declaratory judgment under Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986 (“CERCLA”), 42 U.S.C. § 9601 et seq. The hazardous waste site at issue in this case is the Delatte Metals Superfund Site located near Ponchatoula, Tangipahoa Parish, Louisiana (“Site”). Battery crushing, recycling, and smelting ventures were operated at this location for decades and caused extensive soil and groundwater contamination onsite and in the surrounding area. The defendant owned portions of the Site property and formed and managed companies that operated at the Site at the time of

disposal of hazardous substances.

2. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the defendant is liable for the United States' response costs related to the Site. The United States seeks recovery of at least \$32 million in unreimbursed costs incurred by the United States for response actions performed in relation to the Site.

3. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and 28 U.S.C. § 2201, the United States seeks a declaratory judgment that the defendant is liable for all future response costs incurred by the United States in relation to the Site.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331 and 1345 and Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a), 9613(b). The defendant resides in this district and is a citizen of the State of Louisiana.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), because the defendant resides in this district and the claims arise in connection with response actions taken to address releases of hazardous substances that occurred at property in this district.

### **DEFENDANT**

6. Larry Delatte is an individual who is a former owner of a portion of the Site at the time of disposal of hazardous substances and the former president and manager of companies that disposed of hazardous substances at the Site.

## STATUTORY FRAMEWORK FOR CERCLA CLAIMS

### **CERCLA § 107(a) – Liability for Response Costs**

7. Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), provides in pertinent part:

Whenever any hazardous substance is released or there is a substantial threat of such a release into the environment, . . . the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance . . . at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment.

8. The President's authority to act under Section 104 of CERCLA, 42 U.S.C. § 9604, has been lawfully delegated to EPA.

9. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section –

(1) the owner and operator of a . . . facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

...

. . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for –

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan . . . .

...

(D) the costs of any health assessment or health effects study

carried out under section 9604(i) of this title.

10. The national contingency plan (“NCP”) provides the “procedures and standards for responding to releases of hazardous substances, pollutants, and contaminants . . . .” 42

U.S.C. § 9605. The NCP is codified at 40 C.F.R. Part 300.

11. Section 107(a) of CERCLA also provides that “the amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D).”

12. CERCLA liability under Section 107(a) is strict and joint and several.

#### **CERCLA § 113(g)(2) – Liability for Future Response Costs**

13. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), entitles the United States to obtain a declaratory judgment on liability for future response costs: “[T]he court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.”

### **GENERAL ALLEGATIONS**

#### **The Site**

14. The Delatte Metals Superfund Site is located in a rural setting about two miles southeast of Ponchatoula in Tangipahoa Parish, Louisiana. The street address for the Site is 19113 Weinberger Road, which is the former address of Delatte Metals, Inc.

15. The Site includes an 18-acre area formerly occupied by several battery crushing, reclamation, and smelting operations. An additional 35-40 acres of surrounding residential property, undeveloped land, Selser Creek, tributaries to Selser Creeek, and a Cypress swamp also were contaminated by the battery operations.

16. The defendant's battery operations at the Site began by at least the 1970s and continued until the 1990s. Battery operations at the Site involved spent lead-acid battery demolition using a saw and a crusher and smelting of the lead plates to produce lead ingots for resale. The typical process at the facility involved sawing off the tops of the batteries and removing the lead plates in the battery saw building.

17. Contaminated battery casings, battery acid, and other wastes were stored and discarded onsite, some in unlined pits that were later covered over with backfill and structures. As a result of the battery operations, the soil, surface water, and groundwater at the Site became highly contaminated with battery acid and heavy metals, including lead, arsenic, and cadmium.

18. The defendant owned portions of the Site from at least the 1970s through the 1990s. The defendant with another person ran several of the battery ventures on the Site from at least the 1970s to 1982 and then continued to run those battery ventures independently until at least the 1990s. The defendant's corporations were known as Delatte Metals, Inc. (formerly known as Delatte & Fuscia Battery, Inc.), Delatte Lead, Inc. (formerly known as Delatte & Fuscia Lead Products, Inc.), and Delatte Industries, Inc. (also known as Larry Delatte Industries, Inc. and formerly known as Delatte & Fuscia Industries, Inc.). In carrying out these ventures after 1982, the defendant exercised complete control over the corporations. Portions of the defendant's Site property were forfeited due to tax delinquency in 1999.

#### **Response Actions**

19. EPA proposed the Site for listing on the National Priorities List ("NPL") in July 1998 and listed the Site in January 1999.

20. In August 1998, EPA sent the defendant a CERCLA general notice letter, demand

for payment, and an information request.

21. EPA proceeded to perform a removal action in 1998-99. The removal action addressed occupied residential properties as well as stabilization, removal, and offsite disposal of crushed battery casings, slag piles, settling basin solids, waste in tote bags and waste piles located inside the battery saw building.

22. In 1999 and 2000, EPA conducted a Remedial Investigation and Feasibility Study, including a Human Health Risk Assessment and an Ecological Risk Assessment. EPA then conducted a remedial action at the Site in 2002 and 2003. EPA's final close out report was completed in March 2005. The Site was deleted from the NPL in August 2005. EPA continues to conduct periodic reviews at the Site.

23. Some of the human health and environmental benefits achieved at the Site through the removal and remedial actions include:

- disposal of approximately 30,000 tons of crushed battery casings, smelter slag, smelter ash, and other source material; 68 tons of contaminated smelter equipment; 28 drums of lead contaminated oil and oil debris; 6,617 gallons of sulfuric acid; and 650 tons of scrap metal;
- installation of below grade, permeable reactive barrier walls to neutralize the acidity of the shallow groundwater and limit further migration of dissolved metals;
- excavation, treatment, and disposal of approximately 85,000 tons of soil;
- disposal of 450 tons of concrete as hazardous waste;
- treatment of an estimated 1.5 million gallons of water.

24. EPA incurred at least \$32 million in response costs as of 2007.

## CAUSE OF ACTION

### CERCLA Liability for Response Costs – CERCLA §§ 107(a) and 113(g)(2)

25. The allegations in paragraphs 1-24 are realleged and incorporated herein by reference.
26. The Site is a “facility” within the meaning of Sections 101(9) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(9), 9607(a).
27. Lead, arsenic, and cadmium are “hazardous substances” within the meaning of Sections 101(14) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14), 9607(a).
28. There have been “releases” and “threatened releases” of hazardous substances, including lead, arsenic, and cadmium, into the environment at and from the Site within the meaning of Sections 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22), 9607(a).
29. “Disposal” of hazardous substances, including lead, arsenic, and cadmium, occurred at the Site within the meaning of Sections 101(29) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(29), 9607(a).
30. As a result of the releases or threatened releases of hazardous substances from the Site, the United States has incurred and will continue to incur “response” costs, within the meaning of Sections 101(23)-(25) and 107(a), 42 U.S.C. §§ 9601(23)-(25), 9607(a). The United States has incurred at least \$32 million in response costs in relation to the Site as of 2007. The response costs incurred by the United States are not inconsistent with the National Contingency Plan.
31. The United States has undertaken and may undertake response actions in the

future at the Site to protect the public health, welfare, or the environment, including removal and remedial actions, in response to releases or threatened releases of hazardous substances, pollutants, and contaminants within the meaning of Sections 104 and 107 of CERCLA, 42 U.S.C. §§ 9604 and 9607.

32. Larry Delatte is a “person” within the meaning of Sections 101(21) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(21), 9607(a).

33. Larry Delatte owned or operated a portion of the Site at the time of disposal of hazardous substances at the Site within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

34. Larry Delatte is liable to the United States for all costs of response actions incurred and to be incurred by the United States in relation to the Site, including enforcement costs and prejudgment interest on such costs, pursuant to Sections 107(a) and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607(a), 9613(g)(2).

#### **REQUEST FOR RELIEF**

WHEREFORE, plaintiff, the United States of America, respectfully requests that this Court:

A. Enter judgment, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), in favor of the United States and against Larry Delatte for reimbursement of at least \$32 million in response costs incurred by the United States as of 2007 for response actions in relation to the Site;

B. Enter a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that will be binding on any subsequent action or actions to recover further



response costs or damages, declaring Larry Delatte liable for future response costs incurred by the United States in relation to the Site;

- C. Award the United States its costs of this action; and
- D. Grant such other and further relief as this Court deems to be just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

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